

OVERVIEW AND SCRUTINY COMMITTEE
28 July 2015

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

10

TITLE OF REPORT: THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012 – IMPLEMENTATION

REPORT OF THE HEAD OF POLICY AND COMMUNITY SERVICES

PORTFOLIO HOLDERS; COUNCILLORS T HONE & A HUNTER

1. SUMMARY

- 1.1 To provide the context of and recommendations for policy on the implementation of the Public Services (Social Value) Act 2012 ('the Act') by the authority.

2. RECOMMENDATIONS

- 2.1 That Cabinet approve this Public Services (Social Value) Act 2012 Policy for application to all relevant procurement and contract management.
- 2.2 That the Policy will apply to all procurement contracts above the EU threshold (of £172,514), including capital works and goods supply.
- 2.3 That Cabinet approve a "go local" policy for all applicable procurement below a £50,000 threshold, and
- 2.4 That Cabinet recommends that the Contract Procurement Rules be updated (to the extent required) to reflect the updated Policy under existing delegated powers of the monitoring officer as detailed in the constitution.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The full provisions of the Act came into force in January 2013 and all authorities were required to comply with its provisions at that time. NHDC does not yet fully apply the Act, although consideration of whether it may apply to individual, relevant contract proposals has been included within Committee report templates/guidance since 2013.
- 3.2 The recommended level at 2.2 represents a more extensive application of the Act. However, the proposal is seen to be the most effective and pragmatic application of the requirements at this stage.

- 3.3 Consideration of social value forms a necessary, and statutory, part of the council's procurement processes, alongside a number of other considerations. It is already included as a stage within the formal tender process within the updated Contract Procurement Rules presented to Finance Audit and Risk (FAR) on 15th June 2015 and Cabinet on 16th June 2015. Any consequent amendments to the Contract Procurement Rules will be dealt with under the delegated powers of the Monitoring Officer under 14.6.9 (to make authorised consequential changes to the Constitution to reflect resolutions of Council or the Executive).
- 3.4 This has presented an opportunity to consider the application of social benefit from a wider interpretation of the Act, including the possibility of promoting local enterprise and entrepreneurship, through existing expenditure and procurement processes.
- 3.5 The application of a "Go Local" policy to any purchase or contract below £50,000 is intended to increase NHDC's spending in the local community, supporting local business and entrepreneurship whilst maintaining the principles of "best consideration" in procurement.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration was given to the strictest application of the Act. However, a pragmatic approach to include procurement for Goods and Works was viewed to be more efficient and beneficial to the community.
- 4.2 Consideration was given to applying this Act to all procurement regardless of value. This has not been recommended as implementation would not be time and cost effective.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The proposals as set out in this report have been discussed with the relevant portfolio holders with regard to finance/contracts, and general community benefit. They have also been subject to review by the internal 'Contracts and Procurement Group' at NHDC to ensure they are compliant with procurement and contracting processes. The proposals apply to purchases and contract management procedures, which benefit the whole district, so discussion with individual ward councillors is not required. An earlier report on this matter was presented to, and discussed by, NHDC's Senior Management Team and changes incorporated.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was referred to in the Forward Plan published on 19th June 2015.

7. BACKGROUND

- 7.1 Whilst 'social value' within procurement is a concept that significantly pre-dates the Act, it does provide a useful statutory understanding of what the phrase means, being an improvement to the "economic, social and environmental well-being of the relevant area". This is a phrase already familiar in Local Government in relation to the application of "Best Consideration" in asset disposals.

- 7.2 A challenging economic environment should not be a reason to shy away from ensuring social value is obtained where possible and appropriate. In fact, referring to this issue directly in its guidance on the Social Value Act, the Cabinet Office stated in its Procurement Policy note 2012 as follows:
“In these tight economic times it is particularly important that maximum value in public spending is achieved. However, currently, some commissioners miss opportunities to secure both the best price and meet the wider social, economic and environmental needs of the community. Commissioners and procurers should be taking a value for money approach – not lowest cost – to assessing contracts and the Act complements that approach...”
This concept is also described in a number of NHDCs other plans, including the Procurement Strategy, and the Community Asset Transfer Policy, requiring the authority to seek “best consideration”. The EU legislative framework leaves no doubt that there are instances in which it is valid for a contracting authority to consider social and environmental characteristics when deciding whether to award a contract.
- 7.3 Following all relevant legislation, award criteria relating to social value may only be used if they:
- a) Are being used to assess MEAT (Most Economically Advantageous Tender) in achieving value for money,
 - b) Are linked to the subject matter of the contract,
 - c) Do not confer an unrestricted freedom of choice on a contracting authority,
 - d) Comply with EU Treaty obligations, and specifically are not directly or indirectly discriminatory,
 - e) Are compatible, generally, with EU law;
 - f) Can be compared and / or assessed objectively; and
 - g) Are properly advertised in the contract notice and/or contract documents.
- 7.4 The Act imposes an active duty on relevant contracting authorities to consider the economic, environmental and social benefits that can be achieved through commissioning. It does so by requiring consideration of the following:
- a) How to improve, through procurement, the social, economic and environmental well-being of the area served by that contracting authority; and
 - b) How to undertake a procurement process with a view to securing that improvement.
- 7.5 This duty relates to *service* contracts above the relevant monetary thresholds in the Regulations, whether they fall under Part A or B of those regulations. It also applies to contracts with a *works/supplies* element that is so incidental that the contract would ordinarily be considered a services contract under the Regulations (as well as to frameworks for such contracts).
- 7.6 The Act provides the opportunity to consider a wide variety of social benefit in awarding service contracts, these **could** include, for example (but are not **requirements or tender obligations** which could or would be placed on potential contractors):

- Achievement of jobs for the long-term unemployed
- Career advice and work placements for school children
- Apprentice opportunities and graduate placements
- Skills and training opportunities for staff and local businesses
- Local investment from contractors
- Increased community engagement through consultation
- Encouragement of ethical or environmentally beneficial purchasing
- Stimulating social integration
- Contributing to wider public sector priorities (e.g. health improvement, crime and anti-social behaviour)
- Supply chain and sub-contracting opportunities for SME's and Social Enterprises
- Development of Third Sector organisations

This list is not exhaustive, but seeks to be indicative; the opportunities for imaginative consideration of what constitutes “social value” are extensive and the opportunities for direct impact or benefit in the NHDC area could be substantial. Should individual contractors offer any element of social value in the tender process, then these would ultimately become requirements and obligations in the contract entered into as a result of the tender process.

- 7.7 The value of contracts (total aggregated value over the duration of the contract, not annual cost), where NHDC is required to consider the Social Value Act, are those whose value exceeds the EU regulations concerning inclusion in the European Journal (OJEU), currently EURO 207,000 (£172,514).
- 7.8 There is an opportunity, in implementing policy to comply with this act, to expand NHDC's application of Social Value considerations throughout the procurement process. Following discussions with relevant stakeholders it is suggested that the application of the Social Value Act in North Herts should be considered in relation to all contracts procured over the lower European threshold (£172,514), including capital works and goods supply. Whilst this is not a requirement of the Act, implementation would be no more onerous than a strict observation of the legislation and would further contribute to NHDC's implementation of its Localism agenda.
- 7.9 It is further suggested that NHDC implement a “go local” policy on procurement below £50,000.
- 7.10 A “go local” policy would necessitate any officer seeking to acquire goods or services, for council use, with an aggregate contract value below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. The method of acquisition would be in accordance with the current NHDC Contracts and Procurement Rules. If the “go local” policy cannot be applied, because, for instance, there is no suitable supplier (for example, the procuring officer identifies that prices are too high) within the area, then policy would have been exhausted and considered not to be appropriate, and explained as such within the usual procurement process. The overarching principle of this policy would be that, for appropriate procurement, NHDC **will aim to use** local suppliers for the provision of goods, services and works, having full regard for the principles of “best consideration”.

- 7.11 The clear social benefits of a “go local” policy to businesses and trades in the NHDC area have the potential to be far reaching. The knock-on effects in terms of increased local spending are difficult to quantify but there exists a possibility to inject a very reasonable sum into the local economy per annum.
- 7.12 Central government recently enquired whether authorities were in the process of either considering or developing a specific policy in regard to Social Value, that enquiry was itself prompted by the Lord Young review (see paragraph 8.1 below). It is not intended that this authority develop a stand-alone document entitled ‘Social Value Policy’ but that it forms a background document to inform the overall procurement process to be adopted by the authority and thus be updated and reviewed as required alongside that documentation and other relevant papers, for example toolkits on the application of the Act and the “Go Local” policy.
- 7.13 The adoption of the recommendations in this report relate to all three of the Council’s current Priorities of: Promoting Sustainable Growth; Working with our Communities and Living within our Means. It will also demonstrate the Councils continued commitment “*To promote sustainable growth within our district, to ensure economic and social opportunities exist for our communities*”. (Corporate plan 2016-2021, Full council July 2015)

8. ISSUES

- 8.1 The values imposed by the Act are linked to the thresholds set by EU directives (most recently Directive 2014/24/EU). It has already been suggested, most noticeably by Lord Young in his review of the Act 02/15 (published 13 February 2015), that these thresholds in relation to the application of the Act should potentially be lowered, considerably. It has also been mooted that the application of the Act should be extended beyond service contracts. Whilst this Policy goes a long way to anticipating those changes, there can be no certainty of where they will ultimately be set, particularly given present additional uncertainty arising from the general election and Government policy thereafter.
- 8.2 Whilst the “go local” principle on lower value procurement may be achieved by policy implementation, a totally locality based approach to Social Value in contracts would not be appropriate considering the wider implications and constraints of procurement legislation.
- 8.3 Contract monitoring and management will require active consideration of the adequate implementation of any social value elements and, either the decision by the contract manager to incorporate social value (as being available and appropriate) or not to incorporate social value (together with the reasons why this is not suitable), will be formally recorded in the Decision Notice which must be completed by all contract managers for ANY contract with an **aggregated value** over the lower EU thresholds.

9. LEGAL IMPLICATIONS

- 9.1 The Act was introduced to require public authorities, not only local authorities, to have regard to economic, social and environmental wellbeing in connection with public services contracts, and for connected purposes.
- 9.2 The legislation therefore changes the Councils’ responsibilities in the procurement of services. If this Policy is approved, it will meet those obligations and additionally change the Councils’ approach to the procurement of goods and works.

10. FINANCIAL IMPLICATIONS

- 10.1 There is a risk that application of “best value” as a result of consideration of social value *may* incur elevated costs to contracts procured. It is expected that officers procuring or managing contracts would challenge increased cost demands on a case-by-case basis under the current system of effective contract management
- 10.2 There is a further risk that the application of a “go local” policy may incur increased costs in the acquisition of goods and services below the relevant financial threshold. It is, again, expected that officers procuring such goods or services would be mindful of the principles of value for money and best consideration and negotiations would be handled accordingly. The benefits of supporting local businesses and trades may, however, outweigh a marginal cost increase in terms of the wider social and economic outcomes.

11. RISK IMPLICATIONS

- 11.1 There is a risk of increased challenge by unsuccessful service providers/contractors in the procurement process if the Social Value application were the only differentiation in awarding a contract, particularly if unsuccessful bidders/service providers may have provided better value for money from a pure cost perspective. The Public Contract Regulations 2015 specifically mandate the use of social value as an award criterion. Regulation 67 covers award criteria, regulation 70 covers the use of social value in contract management (performance) of contracts. Implementation of statutory responsibility should be sufficient to avoid liability where appropriate. Clear direction in invitations to tender to incorporate social value should satisfy liability otherwise. Contractors who bid for public service contracts will already be aware of the need to demonstrate a benefit that is wider than ‘cost’ (i.e. they should understand that there is a price/quality consideration), particularly with regard to the social value aspects of their particular contract speciality, which will necessarily differ from contractor to contractor.
- 11.2 Active consideration of the social impact of applying this act should not be reduced to a simple “tick box” exercise. Whilst the act only requires *consideration of social value* in the procurement exercise, the potential benefits to the district require reasonable consideration of social value inclusion where practicable alongside all other procurement considerations.
- 11.3 It is anticipated that changes/additions which are in the process of being made to the Council’s Invitations to Tender templates will accommodate the responsibilities of the Act and policy changes as approved

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty that public bodies must meet, underpinned by more specific duties, which are, designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.3 This report identifies that there are risks of challenge which may arise from a 'go local' approach to procurement of goods under £50k. However if the procedures are observed, with regard to a 'go local' approach, then risks are mitigated within the procurement/bid process.
- 12.4 The application of the social value requirements should not add further burden to potential suppliers but rather attract greater benefits for a community. We also need to ensure that our approach in the implementation of Social Value requirements does not unduly or adversely impact any potential supplier (save for any impact arising as a result of the fact that a 'go local' policy may preclude applying best price as a primary consideration).

13. SOCIAL VALUE IMPLICATIONS

- 13.1 This report directly addresses the application of Social Value to the procurement and commissioning of services

14. HUMAN RESOURCE IMPLICATIONS

Currently the implementation of this policy would fall to officers procuring services under the scope of the Act.

15. APPENDICES

- 15.1 None

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 Public Services (Social Value) Act 2012 legislation and guidance

Social Value Act Review by Lord Young February 2015

The Public Contracts Regulations 2015